

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 174 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PLASTIC PRODUCTS ENGG. CO.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR JP SHAH for Petitioner

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 23/04/99

ORAL JUDGEMENT

#. At the instance of assessee following question of law arising out of the order of the Income Tax Appellate Tribunal dated 16.8.82 in Income Tax Appeal No. 1539/Ahd/81 relating to assessment year 1976-77 has been referred to this court along with the statement of case

for its decision:

"Whether on the facts and circumstances of the case, the receipt of deposits of Excise duty was taxable income of the assessee?"

#. The facts found by the Tribunal are that the assessee is a manufacturer of industrial plastic goods out of teflon and fluron. In the assessment year under consideration the assessee has credited an amount of Rs.1,97,224/- to the excise deposit account. Out of this amount a sum of Rs.48,682/- had been returned to the customers for the reasons that the delivery of the goods was not taken and there was excess deposit. The balance in that account remained at Rs.1,48,542/-. This amount has been received by the assessee on the goods sold by it. The assessee claimed that it was not trading receipt because the assessee had received it on condition that the deposit shall be refunded to the buyer in case it is not finally payable by the assessee. Therefore, it is not a part of sale price. The Income Tax Officer did not agree with the claim of the assessee. According to him, the deposits in question are trading receipts and should be taxed. That has been confirmed by the CIT (Appeals) as well as the Tribunal.

#. In arriving at this conclusion the Tribunal relied on a decision of the Supreme Court *Chowringhee Sales Bureau Private Limited v. C.I.T West Bengal* 87 ITR 542 and of this court *Motilal Ambaidas v. CIT* 108 ITR 136.

#. It has been urged by the learned counsel for the petitioner that as the amount in question has been received by the assessee on account of Excise Duty payable on the goods sold by it, which was disputed liability, and the assessee has undertaken to refund the amount to the buyers in case the dispute with Excise Department culminates in favour of the assessee, it never became part of the sale price and remained a contingent receipt. He further contends that where any amount has been received by the assessee but has been a subject matter of the dispute the same cannot be said to be accrued or received finally by the assessee so as to form part of his income as a trading income. He relied on a decision of the Supreme Court in *C.I.T. West Bengal - II v Hindusthan Housing and Land Development Trust Limited* 161 ITR 524.

#. Learned counsel for the revenue supported the decision of the Tribunal by contending that whether the Excise Duty is shown separately in the books of account

or as part of sale price is a matter of accounting policy followed by the assessee, but it cannot alter the character of the amount received by the assessee as part of the sale price received by him for the goods sold by him. Therefore according to him, the decision of the Tribunal is in consonance with the principle enunciated in Chowringhee Sales Bureau case (supra).

#. Having carefully considered the rival contentions we are of the opinion that the Tribunal has rightly reached its conclusion. The facts of the case squarely falls within the principle enunciated in Chowringhee Sales Bureau case (supra). That was a case in which the assessee as an auctioneer has received a sum of Rs.32,986 as sales tax from the buyers. The assessee has not deposited the said amount with the Sales Tax Department nor has paid it to the buyers. The reason for this was stated to be that the assessee had challenged his accessibility to Sales Tax as auctioneer by filing writ petition before Calcutta High Court. He was successful before the Single Judge of the High Court. However, the State has filed appeal against the judgment, which was pending before the Division Bench. The assessee like in the present case deposited the sum received from the buyers towards sales tax liability in a separate account to be dealt with in the like manner as contended by the assessee in the present case either to be paid to the revenue in case he fails in the pending litigation or to be paid to the buyers in case he succeeds. The contention was rejected by the Supreme Court.

#. Coming to the merit of the case, the Court found

"As the amount of Sales Tax was received by the appellant in its character as an auctioneer the amount in our view should be held to form part of its trading or business receipt. The appellant would, of course, be entitled to claim deduction of the amount as and when it pays it to the State Government"

#. The principle fully governs the facts of the present case. The assessee has received the disputed amount described as excise duty which he is otherwise entitled to collect as part of sales price though by showing separately in the invoices from the buyers. The amount has been collected in no other character except as seller of goods as part of the sales price at best subject to stipulation that in case ultimately liability of tax is not sustained the amount collected as tax would be refundable. That is otherwise so in the case of any

amount collected from buyer referable to indirect tax, where ultimately any refund becomes due, the same can be refunded to payer only on showing that the same has not been passed on to the buyer. The court therefore while holding that the amount is a trading receipt made it further clear that the assessee may be entitled to deduction of the amount as and when it bears the character of expenses as allowable trade expenses.

#. The decision relied on by the assessee in Hindustan Housing and Land Development Trust (Supra) in our opinion has no bearing on the controversy raised in the present case, and clearly distinguishable. That was a case in which the assessee was maintaining his accounts on mercantile basis. It was engaged in the business of dealing in lands. The lands of the assessee had been acquired. Assessee had laid compensation at certain rate in respect of such land. The Assessing Officer has sought to include a sum of Rs.7.24,914/- as extra amount of compensation allegedly accruing to the assessee during the relevant assessment year on the basis of claim made by the assessee for enhancement of the compensation from the one determined by the acquisition authority. It is in these circumstances, the court found that the assessee had not even acquired right to receive the enhanced compensation, merely on the basis of laying his claim. A right to receive compensation accrues to the assessee only when it is judicially determined by the final court. The Court reiterated the principle enunciated by it earlier in E.D.Sasoon & Co. v. CIT (1954) 26 ITR 27, where the Court had said through Bhagwati, J (speaking for the majority) that in order that any income, profits or gains may accrue to a person it is necessary that he must have acquired a right to receive the same or that a right to income, profits or gains has become vested in him.

##. The court further observed:

"It is sufficient to point out that there is a clear distinction between cases such as the present one, where the right to receive payment is in dispute and it is not a question of merely quantifying the amount to be received, and cases where the right to receive payment is admitted and the quantification only of the amount payable is left to be determined in accordance with settled or accepted principle"

##. Before us it is nobody's case that the assessee has no right to receive the amount which he has received

from buyers and was credited to the excise deposit account. What is disputed by the assessee in fact is, his liability to incur expenditure in respect of goods manufactured by him. Therefore in our opinion, the Hindustan Housing and Land Development Trust case (supra) is not applicable to the facts of the present case.

##. It was urged by the learned counsel for the assessee that at any rate the said amount is not liable to be taxed without considering the fact that in the event the amount is included in the total taxable income, the same being received by the assessee to discharge his liability of excise duty, he must be held entitled to deduction on account of that liability. Suffice it to state the question whether assessee during the relevant assessment year is entitled to claim deduction on account of excise duty payable by him was neither raised before the Tribunal nor decided by the Tribunal. Therefore the question whether the assessee is entitled to claim deduction in respect of additions made on account of excise duty amount received by him which formed part of a trade liability incurred by the assessee towards payment of the excise duty, though liability to tax disputed by him, is not arise out of Tribunal's order which can be made subject matter of scrutiny in this reference. The law has been declared by the Supreme Court in Chowringhee Sales Bureau case itself that the assessee is entitled to claim deduction when occasion for the same arises. It is for the assessee to raise the claim before the Tribunal and to be dealt with by the Tribunal in accordance with law if such claim is raised before it.

##. As a result we answer the above question in affirmative that is to say in favour of the revenue and against the assessee.

There shall be no order as to costs.

(Rajesh Balia, J) (A.R. Dave, J)